

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH POTTER,	§
	§
Defendant Below-	§ No. 55, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0910007133
Plaintiff Below-	§
Appellee.	§

Submitted: July 27, 2011
Decided: September 27, 2011

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 27th day of September 2011, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Joseph Potter, filed this appeal from the Superior Court's order sentencing Potter for a violation of probation (VOP). The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Potter's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that, at the time of his arrest in December 2010, Potter already was serving multiple probationary sentences resulting from three

prior guilty pleas. In March 2009, Potter had pled guilty to one count of theft of a motor vehicle and was sentenced on June 26, 2009 to two years at Level V imprisonment to be suspended entirely for probation. In December 2009, Potter had pled guilty to theft and conspiracy. The Superior Court sentenced him on April 30, 2010 on each conviction to two years at Level V incarceration to be suspended for one year of probation. In June 2010, Potter pled guilty to charges of aggravated menacing and resisting arrest. On the aggravated menacing charge, the Superior Court sentenced him, effective April 30, 2010, to four years at Level V incarceration to be suspended for four years at Level IV (home confinement or work release), to be suspended after serving six months at Level IV for one year at Level III probation. On the resisting arrest charge, the Superior Court sentenced Potter to two years at Level V incarceration to be suspended for one year at Level III probation.

(3) Following his release from custody on his most recent sentence, Potter was returned to the State of Pennsylvania to complete serving a sentence there. Upon his release from Pennsylvania custody, Potter was informed that he had to report to his Delaware probation supervisor for processing the next day, which was October 14, 2010. Potter failed to report. He remained at large until December 11, 2010 when he was involved in a motor vehicle accident and arrested on charges relating to the accident. Potter was charged with violating probation for his failure

to report, and a hearing was held on January 14, 2011. Potter, who was represented by counsel at the hearing, admitted that he had failed to report but argued that his failure to report was due to a misunderstanding. The Superior Court found Potter in violation of his probation and sentenced him on the aggravated menacing charge to four years at Level V incarceration (Key Program), with credit for 32 days served, to be suspended upon successful completion of Key for the balance at Level IV Crest Program, to be suspended upon successful completion of Crest for one year at Level III probation (Crest Aftercare). On the resisting arrest charge, the Superior Court sentenced Potter to two years at Level V incarceration to be suspended for one year at Level III probation. On the theft charge, the Superior Court sentence Potter to eighteen months at Level V incarceration to be suspended for one year at Level III probation. The Superior Court discharged Potter as unimproved from any further probation on his conspiracy and theft of a motor vehicle sentences. This appeal followed.

(4) In his opening brief on appeal, Potter contends that his sentence was excessive under the SENTAC guidelines. He also contends that he was denied due process at his VOP hearing. We find no merit to either argument.

(5) This Court's appellate review of a sentence is extremely limited. Our review generally ends upon a determination that the sentence is within the statutory

limits prescribed by the legislature.¹ In sentencing a defendant for a VOP, the trial court is authorized to impose any period of incarceration up to and including the balance of the Level V time remaining to be served on the original sentence.² In this case, Potter had only served 32 days in prison on his five original sentences. Accordingly, there were nearly twelve years not served on the original sentences, which the Superior Court could have reimposed after finding Potter had violated his probation. Instead, the Superior Court only sentenced Potter to four years at Level V incarceration to be suspended upon his successful completion of the Key Program for decreasing levels of supervision. The sentence imposed by the Superior Court was authorized by law, and we conclude that it was neither arbitrary nor excessive.

(6) Furthermore, we find Potter's contention that he was denied due process at the VOP hearing to be completely unsupported by the record. Potter, through his appointed counsel, admitted that he had failed to report to his Delaware probation supervisor as he was ordered to do. Moreover, contrary to Potter's contention, the Superior Court unequivocally informed Potter that it was not considering his latest criminal charges (relating to the 2010 motor vehicle accident) as a basis for violating his probation. Potter was given the opportunity to address the court and present a defense. The Superior Court simply did not accept Potter's

¹ *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

² 11 Del. C. § 4334(c).

explanation that his failure to report was the result of a misunderstanding. Under the circumstances, we find no merit to Potter's due process claim.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice